

(vi) Claims for damage based on a failure of the Parties or their related entities to flow down the cross-waiver.

(5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

§ 1266.104 Cross-waiver of liability for NASA expendable launch vehicle (ELV) program launches.

(a) The purpose of this section is to establish a cross-waiver of liability between the parties to agreements for NASA ELV program launches, and the parties' related entities, in the interest of encouraging space exploration and investment. The cross-waiver of liability shall be broadly construed to achieve this objective.

(b) As used in this section, the term:

(1) *Party* means a person or entity that signs an agreement involving an ELV launch;

(2) *Related Entity* means:

(i) A contractor or subcontractor of a Party at any tier;

(ii) A user or customer of a Party at any tier; or

(iii) a contractor or subcontractor of a user or customer of a Party at any tier. *Contractors* and "Subcontractors" include suppliers of any kind.

(3) *Damage* means:

(i) Bodily injury to, or other impairment to health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage;

(4) *Payload* means any property to be flown or used on or in an ELV; and

(5) *Protected Space Operations* means all expendable launch vehicle and payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of the agreement. Protected Space Operations begins at the signature of the agreement and ends when all activities done in implementation of the agreement are completed. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of: expendable launch vehicles (ELV), transfer vehi-

cles, payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment, and related facilities or services. *Protected Space Operations* excludes activities on Earth which are conducted on return from space to develop further a payload's product or process for use other than for ELV-related activities necessary to complete implementation of the agreement.

(c)(1) Each Party agrees to a cross-waiver of liability pursuant to which each Party waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this section based on damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict and tort (including negligence of every degree and kind) and contract, against:

(i) Another Party;

(ii) A related entity of another Party;

(iii) The employees of any of the entities identified in paragraphs (c)(1)(i) and (ii) of this section.

(2) In addition, each Party shall extend the cross-waiver of liability as set forth in paragraph (c)(1) of this section to its own related entities by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this section.

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects (Mar. 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and other International Acts Series (T.I.A.S.) No. 7762) where the person, entity, or property

causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this section, this cross-waiver shall not be applicable to:

(i) Claims between a Party and its own related entity or between its own related entities;

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct;

(iv) Intellectual property claims;

(v) Contract claims between the Parties based on the express contractual provisions of the agreement;

(vi) Claims for damage based on a failure of the Parties or their related entities to flow-down the cross-waiver.

(5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver shall not be applicable when the Commercial Space Launch Act cross-waiver (49 U.S.C. app. 2615) is applicable.

PART 1271—NEW RESTRICTIONS ON LOBBYING

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APPENDIX A TO PART 1271—CERTIFICATION REGARDING LOBBYING

APPENDIX B TO PART 1271—DISCLOSURE FORM TO REPORT LOBBYING

AUTHORITY: Section 319, Pub. L. 101-121 (31 U.S.C. 1352); Pub. L. 97-258 (31 U.S.C. 6301 et seq.)

CROSS REFERENCE: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

SOURCE: 55 FR 6737, 6748, Feb. 26, 1990, unless otherwise noted.

Subpart A—General

§ 1271.100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in appendix B, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.